be called minerals *feræ naturæ*,[4] and to be compared to wild game, but that analogy fails as a test of property rights, because while the public in general has a right to reduce wild game to possession, only those owning the surface above the deposits can bore for oil and gas.[5] And analogies drawn from the rules governing percolating water fail because that is regarded as being evenly distributed so that every surface owner is allowed to interfere with its flow regardless of the effect on his neighbors.[6]

A recent decision of the Supreme Court of the United States recognizes the true nature of the right: that the surface owner has not really a property right in the underlying oil and gas, but only a right to reduce it to possession. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61. This case holds that a statute forbidding the waste of water drawn from artesian wells in order to collect the carbonic acid gas contained therein does not deprive the surface owners of property without due process of law. The decision is rested largely upon the authority of a previous decision by the same court sustaining the constitutionality of a statute that forbade the wasting of natural gas as a process of pumping the oil with which it was mixed.[7] This view reaches the conclusion toward which the authorities have tended. For it has been held that oil and gas are not in the landowner's possession until he has perfected a means of taking them from the ground,[8] and that in the absence of statute his neighbors may draw them all from under his land,[9] so that unless he taps the common reservoir for himself he may lose his potential rights in its contents.[10] By thus regarding the subterranean deposit as a common supply belonging potentially to all the surface owners, but ultimately and actually to such of them as shall draw it off, the courts have upheld the state's right to regulate the means of taking possession of it,[11] and to forbid its waste.[12] And in one instance without the aid of a statute, it has been held, that a man can only draw it off in a reasonable manner with due regard for the rights of other potential owners.[13] So in the principal case the regulation of the exercise of this right of potential ownership is not a taking of property without due process, but rather a safeguarding of the rights which all the adjoining landowners have in the common supply.

NATURE OF QUASI-CONTRACTUAL RELIEF APPLIED TO VOLUNTARY PAYMENTS. — That quasi-contractual relief is equitable in its nature

[4] See Westmoreland & Cambria Natural Gas Co. *v.* DeWitt, 130 Pa. St. 235, 249.
[5] See Ohio Oil Co. *v.* Indiana (No. 1), 177 U. S. 190, 209.
[6] Chasemore *v.* Richards, 7 H. L. Cas. 349; New Albany & Salem R. Co. *v.* Peterson, 14 Ind. 112. A few cases do hold that the offender must act reasonably. Swett *v.* Cutts, 50 N. H. 439.
[7] Ohio Oil Co. *v.* Indiana (No. 1), *supra.*
[8] Westmoreland & Cambria Natural Gas Co. *v.* DeWitt, *supra.*
[9] Hague *v.* Wheeler, 157 Pa. St. 324.
[10] See Jones *v.* Forest Oil Co., 194 Pa. St. 379, 383.
[11] Jamieson *v.* Indiana Natural Gas & Oil Co., 128 Ind. 555.
[12] Townsend *v.* State, 147 Ind. 625.
[13] Manufacturers Gas & Oil Co. *v.* Indiana Natural Gas & Oil Co., 155 Ind. 461.

has been uniformly recognized by the courts.[1] Yet it has become almost universal to lay down certain arbitrary tests governing such relief. The most striking example is the rule that voluntary payments cannot be recovered.[2] It is to be regretted that such an expression ever came to be frequently applied, for not only are the courts hopelessly confused as to what is a voluntary payment,[3] but only too often has the use of the words as a solving phrase obscured the true ground of the relief given.[4]

In a recent English case the highway authorities of a parish made some repairs on a road which the defendants were under a statutory duty to make but refused to undertake. It was held that the authorities were volunteers in making the repairs and could not recover their expense. *Macclesfield Corporation* v. *The Great Central Ry.*, [1911] 2 K. B. 528.

The cases which have recognized the true equitable nature of the problem seem to have arrived at the result that, once the primary liability is fixed on the defendant, it is only just that he should pay one who has relieved him of it,[5] unless the facts show that the payment was made as a gift [6] or was unreasonable, officious.[7] Thus recovery may be had for payments made under compulsion of any kind even though it does not amount to duress.[8] Acting in pursuance of a strong moral duty will be enough to warrant recovery.[9] Doing an act which is for the public benefit or in the furtherance of which the public has an interest will be sufficient reason for recovery even though the motive is also to benefit the actor.[10] Where a finder preserves lost property, he may recover from the owner for services so rendered.[11] On the same principle a purchaser at an execution sale may recover from the debtor if the latter had

[1] Moses *v.* Macferlan, 2 Burr. 1005; Western Assurance Co. *v.* Towle, 65 Wis. 247.

[2] Recovery is denied on this ground very frequently. See Fellows *v.* School District, 39 Me. 559; Wood *v.* City of New York, 25 N. Y. App. Div. 577. The same tendency is shown in the rule that there may be no recovery for mistake of law. Bilbie *v.* Lumley, 2 East 469. Another example is the rule requiring a plaintiff who has waived a tort to abide by his choice at all events. Terry *v.* Munger, 121 N. Y. 161.

[3] Some cases have required an element of compulsion to prevent the payment from being voluntary. Illinois Glass Co. *v.* Chicago Tel. Co., 234 Ill. 535. Others require that the plaintiff have acted in furtherance of a duty either legal or equitable. Earle *v.* Coburn, 130 Mass. 596. The only thing that seems settled is that payments are not necessarily voluntary in which the actor's mind is active, or which are not made under duress, or undue influence. Exall *v.* Partridge, 8 T. R. 308; Patterson *v.* Patterson, 59 N. Y. 574.

[4] Matheny *v.* Chester, 141 Ky. 790. Thus recovery has been denied of payments illegally charged for a permit to build vaults under a city street. Wood *v.* City of New York, *supra*.

[5] Moses *v.* Macferlan, *supra*.

[6] Osborn *v.* The Governors of Guys Hospital, 2 Str. 728; Doyle *v.* The Rector, Churchwarden and Vestrymen of Trinity Church, 133 N. Y. 372.

[7] KEENER, QUASI-CONTRACTS, 388.

[8] Exall *v.* Partridge, *supra*. Payment in pursuance of an illegal demand of taxes may be recovered. Preston *v.* City of Boston, 12 Pick. (Mass.) 7.

[9] Recovery is allowed a plaintiff from the deceased's estate for burial of a corpse. Ambrose *v.* Kerrison, 10 C. B. 776. A plaintiff who supports one in need may recover from the person chargeable in the first instance. Forsyth *v.* Ganson, 5 Wend. (N. Y.) 558.

[10] Nicholson *v.* Chapman, 2 H. Bl. 254. *Cf.* Great Northern Ry. Co. *v.* Swaffield, L. R. 9 Exch. 132.

[11] Nicholson *v.* Chapman, *supra*; Chase *v.* Corcoran, 106 Mass. 286.

no title to the goods sold.[12] But where both the effect and motive serve only a personal desire, such as to save one's credit when the payment could not have been demanded, recovery has been denied.[13]

Though there is no actual compulsion in the principal case, yet it is submitted that the services were not so unreasonable as to justify the denial of a recovery. The repair of streets is as much to be encouraged, as a public matter, as the preservation of lost property. Even though the repairs were made to protect the plaintiffs' position as highway authorities, yet that should be no bar to recovery, since their position makes it reasonable for them to act. Since they represent the voters in the repair of streets, it is as reasonable for them to act as it would be for the voters themselves. And it would be difficult to say that the voters of a district were officious in repairing their roads. In truth the highway authorities could not avoid making the repairs without prejudicing themselves and repudiating their duty toward the voters, which exists even though legal liability to repair is removed. It seems, therefore, that an arbitrary use of the phrase "voluntary payment" has led the court to deny relief in a case where in equity and good conscience the defendant should pay.

THE DATE TO WHICH THE TITLE OF THE TRUSTEE IN BANKRUPTCY RELATES BACK. — Under the Bankruptcy Act of 1867 the title of the assignee to the estate of the bankrupt related "back to the commencement of the proceedings in bankruptcy."[1] It was held that under this provision the assignee could sue to recover goods transferred by the bankrupt after the filing of the petition but before the adjudication.[2] The present act provides that "the trustee of the estate of a bankrupt, upon his appointment and qualification, . . . shall . . . be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt." But among the classes of the bankrupt's property so passing to the trustee the act mentions "(5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."[3] An attempt has been made to reconcile these different statements as to the date of relation back of the trustee's title by saying that the words "prior to the filing of the petition" refer to what property passes to the trustee, the words "as of the date he was adjudged a bankrupt" to the time when the property passes.[4] But it is plain that the effect of either phrase must be merely to determine what property passes to the trustee, since the trustee cannot really take title till his appointment and qualification.[5]

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[12] McGhie *v.* Ellis, 4 Litt. (Ky.) 244; Preston *v.* Harrison, 9 Ind. 1; Reed *v.* Crosthwait, 6 Ia. 219. These decisions are in equity. No case seems to have arisen at law, but Professor Keener believes the same result should be achieved. KEENER, QUASI-CONTRACTS, 396.

[13] Harvey *v.* Girard National Bank, 119 Pa. St. 212.

[1] U. S. REV. STAT., 1878, § 5044.

[2] Bank *v.* Sherman, 101 U. S. 403.

[3] BANKRUPTCY ACT OF 1898, § 70 *a*.

[4] See *In re* Pease, 4 Am. B. R. 578, 581; COLLIER, BANKRUPTCY, 8 ed., 807.

[5] Fuller *v.* New York Fire Ins. Co., 184 Mass. 12; Rand *v.* Iowa Central Ry. Co.,